

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TIMOTHY A. CARL,

Plaintiff,

CASE NO. 1:11-CV-94

v.

HON. ROBERT J. JONKER

COUNTY OF MUSKEGON, et al.,

Defendants.

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ORDER RE COSTS

This Court entered Judgment for Defendant Jawor on August 19, 2016 (ECF No. 379). Defendant filed a Bill of Costs on September 13, 2016, seeking \$13,151.67 in reimbursable costs (ECF No. 385). Plaintiff moves to have the costs disallowed (ECF No. 385-388). This is the second round of litigation over costs, and Plaintiff simply incorporates his first round arguments against an award of costs. The Court similarly incorporates its previous ruling on these issues (ECF No. 351), and for the same reasons overrules Plaintiff's objections and again awards Defendant Jawor her costs.

The only new reason Plaintiff's counsel advances against an award of costs is "the Court's extraordinary and remarkable delay in this case." PageID.5888. Plaintiff's counsel does not develop the argument or elaborate the factual predicate for his assertion. The case has been pending in this Court or the Court of Appeals for over five years. But the Court's independent review of the docket discloses no delay or similar circumstance that would warrant the exercise of discretion against an award of costs. To the contrary, upon reviewing the docket history, the Court finds appropriate and

timely judicial response to the unusually large array of motions and objections strung over the nearly 6,000 page electronic record.

The case Plaintiff originally filed named 15 defendants, asserted multiple Eighth and Fourteenth Amendment claims and included a series of state law claims. After plenary fact discovery, the parties filed a plethora of dispositive motions (18 on the Court's quick retrospective count) before the cut off of March 31, 2012. The normal briefing schedule of the Local Rules calls for responses and replies over a six week period, to mid-May of 2012. The Magistrate Judge addressed each of the dispositive motions in a series of four separate Reports and Recommendations beginning August 30, 2012, and ending December 26, 2012.

There were objections to all the Reports and Recommendations, with the latest objection brief filed January 23, 2013. Two months later, on March 28, 2013, this Court resolved all the objections, adopted the Reports and Recommendations and entered its own 20-page summary explanation of the reasons for its decision. The parties thereafter settled all their disputes except for the claim against Defendant Jawor, which the Court had dismissed on a "no state actor" theory. Judgment entered on that sole remaining claim on August 26, 2013. Plaintiff appealed on September 20, 2013.

The Court of Appeals reversed the "no state actor" summary judgment and issued its mandate September 10, 2014. The parties tried facilitative mediation without success, and the Magistrate Judge ordered supplemental briefing on June 19, 2015. He then retired from the Bench after many years of federal service. A newly appointed Magistrate Judge took over the case on August 1, 2015. At the time, the electronic record was 5,472 pages. Defendant Jawor asked for permission to file supplemental briefing on a new issue. The new Magistrate Judge issued his Report and

Recommendation on May 4, 2016, recommending no further supplementation, but also recommending summary judgment for Defendant Jawor on the merits.

Plaintiff objected on May 18, 2016. This Court ordered additional briefing in an Order dated May 24, 2016, that explained particular issues and case authority of interest to the Court that the parties had not yet addressed. This Court also directed the parties to a settlement conference with a Magistrate Judge who had not worked on any aspect of the litigation. That settlement conference failed, and the parties completed their objections and briefings as of August 1, 2016. This Court entered its decision a few weeks later, on August 19, 2016.

Plaintiff filed his Notice of Appeal on September 13, 2016. The Court of Appeals will now have the opportunity to address the merits of this Court's latest decision, as well as this Court's decision on costs in this Order. This Court has no stake in the outcome on either issue. This Court does have a stake in presenting an accurate summary of the integrity, fairness and timing of its process against what it believes is an unwarranted attack by plaintiff's counsel. It is solely for that reason that the Court takes the time to summarize the record in this Order regarding costs.

Accordingly, **IT IS ORDERED:**

1. Defendant Jawor's Motion for Bill of Costs (ECF No. 385) is **APPROVED**.
2. Plaintiff's Motions to Disallow Costs (ECF No. 386 and 387) are **DENIED**.

IT IS SO ORDERED.

Dated: September 28, 2016

/s/ Robert J. Jonker
ROBERT J. JONKER
UNITED STATES DISTRICT JUDGE